IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.6025/2007.

Satyanarain Kumawat
Vs.
State and ors.

Date of order :- 27/9/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Sandeep Pathak for the petitioner.
Shri Dinesh Yadav for the applicant.
Shri Gurvinder Singh on behalf of
Shri G.S. Gill, Additional Advocate General for State.

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BY THE COURT:-

An application has been filed by Shri Dinesh Yadav, learned counsel for the applicant for impleading him as party respondent.

2) The application is disposed of with the direction that the applicant shall be permitted to intervene in the matter.

3) This writ petition has been filed at the instance of Sarpanch Gram Panchayat Peesangan, District Ajmer.

In the inquiry report that was initially conducted by the Block Development Officer, there are

three charges. The Block Development Officer for the first charge held that petitioner cannot be held responsible for preparation of the list of persons to whom the financial aid was to be provided and that such list was required to be prepared by the Patwari and Secretary of the Gram Panchayat. For the second charge, the BDO recorded that when the mistake was discovered that the amount was paid to Mangi who was stated to be the widow of deceased Guljar, the same was recovered and deposited with the office of District Collector. The Chief Executive Officer in the preliminary enquiry however did not agree with those findings and reversed the findings on each of the charges. It is in that context that petitioner was issued notice by the Divisional Commissioner Ajmer on 24/8/2007 to proceed against him in the inquiry as provided vide Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (for short, “Rules of 1996”).

4) Learned counsel for the petitioner has cited the judgment of the Division Bench of this Court in **Chhoga Ram Vs. State of Raj. & Anr. : RLR 1996(1) 323** and argued that decision of the Gram Panchayat is

supposed to be collective decision and the Sarpanch alone cannot be held responsible if any mistake occurs due to such collective decision. According to him, the Patwari and the Secretary of the Gram Panchayat was responsible for preparing the list of eligible persons to whom the financial aid was to be given. He therefore submitted that the writ of mandamus should be issued setting aside the enquiry report submitted by the Chief Executive Officer dated 31/7/2007 and restoring/upholding the enquiry report submitted by the Block Development Officer dated 30/5/2006 and respondent No.1 was restrained from further proceeding against the petitioner in the matter.

5) On the other hand, Shri G.S. Gill, learned Additional Advocate General has invited the attention of the court that apart from the charges, in question, two more enquiry reports have been submitted by the Chief Executive Officer to the Divisional Commissioner in which also charges of financial irregularities have been prima-facie proved against the petitioner.

6) Without going into the merits of the charges, although it can be observed at this stage that the kind of mandamus setting-aside the preliminary enquiry report submitted by the Chief Executive Officer and restoring/upholding the report submitted by the Block Development Officer cannot be issued in view of the apparent fact that the enquiry has yet to take place before the Divisional Commissioner in terms of Rule 22 of the Rules of 1996 which inter-alia provides that the opportunity shall be given to the delinquent. He shall be served with advance charges requiring him to furnish written-statement and in case he denies the charges, the enquiry officer shall nominate any person to present the case before the enquiry officer on behalf of the State. The enquiry officer shall consider such documentary as well as oral evidence as may be relevant or material in regard to the charges. Opportunity of cross examination of witness shall be provided to the delinquent. Thereupon, the enquiry officer shall prepare a report on conclusion of enquiry, recording his findings on each and every charges as proved or not proved or partly proved

alongwith the reasons to be recorded thereof and submit his report to the State Government for final decision. According to sub-rules (6) & (7) of Rule 22 of the Rules of 1996 the provisions of the Rajasthan Disciplinary Proceedings (Summoning of witnesses and production of documents) Act, 1959 (Rajasthan Act No.28 of 1959) and the rules made thereunder shall also apply *mutatis mutandis* to enquiries being conducted against the Chairpersons, the Deputy Chairperson or Member of Panchayati Raj Institution as the case may be, under these rules and thereafter the State Government while considering the report of enquiry Officer shall give an opportunity of hearing to the delinquent and then pass the final order. All these stages are yet to be gone into. The judgment cited by the learned counsel for the petitioner is distinguishable on facts because in that case, petitioner had been found guilty of misconduct and was removed and that was the stage when he approached the court and the court directed the higher authorities of the State Government to re-consider the matter whether alleged overt act of petitioner was merely error of judgment or it amounted to

disgraceful conduct.

Therefore, this writ petition is dismissed though with the observation that the enquiry against the petitioner shall be conducted strictly in accordance with the provisions of Rule 22 of the Rules of 1996 supra.

At this stage, learned counsel for the petitioner is insisting for a direction to the respondents that till the enquiry is pending and the final report is submitted by the enquiry officer to the State Government, petitioner may not be removed.

The apprehension of the petitioner appears to be wholly unfounded because no order of remove can be passed earlier than culmination of the final enquiry report into an order being passed by the State Government.

(MOHAMMAD RAFIQ), J.

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